



CMCS Informational Bulletin

DATE: June 20, 2018

FROM: Timothy B. Hill, Acting Director
Center for Medicaid and CHIP Services

SUBJECT: Requirements of Section 12005 of the 21st Century Cures Act

The Center for Medicaid and CHIP Services (CMCS) is issuing this Informational Bulletin (CIB) to bring to the States' attention section 12005 of the 21st Century Cures Act (the Cures Act), entitled, "Providing EPSDT Services to Children in IMDs." Section 12005(a) of the Cures Act amends the Medicaid benefit at section 1905(a)(16) of the Social Security Act (the Act) to require Medicaid reimbursement for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services for children under age 21 who are receiving inpatient psychiatric hospital services. Per section 12005(b) of the Cures Act, the amendments made by section 12005(a) shall apply to items and services furnished on or after January 1, 2019.

Background

Institution for Mental Diseases (IMD) Exclusion and Inpatient Psychiatric Hospital Services for Individuals Under Age 21 Exception

An institution for mental diseases (IMD) is defined in section 1905(i) of the Act to mean a "hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services."

Under section 1905(a) of the Act, there is a general prohibition on Medicaid payment for any services provided to any individual who is under age 65 and who is residing in an IMD.¹ There are two exceptions to the IMD exclusion. First, inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 and older in IMDs can be reimbursed (42 C.F.R. § 440.140). Second, inpatient psychiatric hospital services for individuals under age 21, referred to as the "psych under 21" benefit, furnished by a psychiatric hospital, a general hospital with a psychiatric program that meets the applicable conditions of participation, or an accredited psychiatric facility that meets certain requirements, commonly referred to as a "Psychiatric Residential Treatment Facility" (PRTF) can be reimbursed (42 C.F.R. § 440.160).

¹ Clause (B) following section 1905(a) of the Act.

This bulletin addresses the “psych under 21” benefit, and how section 12005 of the Cures Act impacts it.

Early and Periodic, Screening, Diagnostic, and Treatment (EPSDT) Services

The Medicaid program’s benefit for enrolled children and adolescents is known as the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income individuals under age 21 as specified in section 1905(r) of the Act. Section 1905(r) of the Act requires states to have available medically necessary health care, diagnostic services, treatment, and other measures defined in section 1905(a) of the Act in order to correct or ameliorate defects and physical and mental illnesses and conditions discovered by screening services whether or not such services are covered in the state plan. Individuals under age 21 are entitled to EPSDT services whether they are enrolled in a managed care plan or receive services in a fee-for-service (FFS) delivery system.

The Centers for Medicare & Medicaid Services (CMS) has historically prohibited states from claiming expenditures under the inpatient psychiatric hospital services benefit unless the expenditures were made to qualified providers of such services. This prohibition had the effect of denying coverage for other medically necessary items and services covered for children under EPSDT, such as prescription drugs or practitioner services, that were not included by the state as part of the rate paid to the facility for care. These items and services would be available under other benefit categories for individuals under age 21 who did not reside in an IMD.

A CIB released November 28, 2012 entitled “Inpatient Psychiatric Services for Individuals under Age 21”² discussed several Department of Appeals Board (“DAB”) decisions that clarified that other covered services not provided by or in the psych under 21 hospital or facility can be reimbursed when the services are 1) provided to a child residing in an inpatient psychiatric hospital or facility, 2) authorized under the child’s plan of care, and 3) provided by individual practitioners or suppliers under an arrangement with the hospital or facility. This CIB clarified that CMS was applying the flexibility addressed in the DAB decisions in approving State Plan amendments. Even though this flexibility was given to states, individuals under 21 in qualified inpatient psychiatric hospitals and facilities were still not guaranteed access to the full range of EPSDT services. Specifically, individuals in these facilities received psychiatric services and were not assured all other medically necessary services. Even though this CIB allowed other medically necessary services under arrangement to be included in the plan of care, hospitals and facilities were not obligated to enter into such arrangements.

Section 12005 of the Cures Act requires that individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to the full range of EPSDT services. A plan of care is not necessary to authorize any other medically necessary services and Medicaid services may be provided by community practitioners not affiliated with the facility.

Implementation

² <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB-11-28-12.pdf>

Section 12005(a) of the Cures Act amends the Medicaid benefit at section 1905(a)(16) of the Act to require Medicaid reimbursement for EPSDT services for children under age 21 who are receiving inpatient psychiatric services. Per section 12005(b) of the Cures Act, the amendments made by section 12005(a) shall apply to items and services furnished on or after January 1, 2019. States must make available any services coverable under the EPSDT benefit and under section 1905(a) of the Act that children under age 21 who are residing in an inpatient psychiatric hospital or facility are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care. These EPSDT services may be provided by the hospital or facility, under arrangement with a qualified non-facility provider, and/or by a qualified provider in the community not affiliated with or under arrangement with the facility.

42 C.F.R. § 455.1(a)(2) requires that the state has a method to verify whether services reimbursed by Medicaid were actually furnished to beneficiaries. Additionally, 42 C.F.R. § 431.107(b)(1) requires that the Medicaid agency have an agreement with each provider furnishing services under the plan in which the provider agrees to keep all records necessary to disclose the extent (amount) of services the provider furnished to Medicaid beneficiaries. To ensure accountability for program expenditures pertaining to services furnished under section 1905(a)(16) of the Act, as discussed in this bulletin, the Medicaid agency will need to ensure 1) the item or service furnished qualifies as an EPSDT service as defined in section 1905(r) of the Act; 2) the billing for the EPSDT service does not duplicate billing for inpatient psychiatric services under section 1905(a)(16)(A) of the Act by the inpatient psychiatric hospital or facility or a provider furnishing inpatient psychiatric services under arrangement with the inpatient psychiatric hospital or facility; 3) the rate of payment is authorized under the state plan; and 4) there is sufficient information to support the state's proper claiming of such expenditures for federal financial participation (FFP) in accordance with the CMS-64 form claiming guidance for EPSDT services.

Inpatient psychiatric services provided by the hospital or facility or under arrangement with the hospital or facility must be claimed on the Mental Health Facility Services line item of the CMS-64 form. EPSDT services not provided directly by or under arrangement with the inpatient psychiatric hospital or facility must be claimed as any other service covered under the EPSDT benefit. For example, EPSDT screening services should be reported in line 15 of the CMS-64 form, while other EPSDT services should be reported under their respective section 1905(a) state plan benefits in accordance with the CMS-64 form claiming guidance for EPSDT services.

In summary, section 12005 of the Cures Act amends section 1905(a)(16) of the Act to require Medicaid reimbursement for all medically necessary section 1905(a) services furnished to children under age 21 in inpatient psychiatric hospitals and facilities, not just the inpatient psychiatric services identified in the child's treatment plan and provided by the hospital or facility or under arrangement with the hospital or facility. States are not required to submit revisions to their state plans, but are expected to be providing all medically necessary services to children under age 21 who are residing in an inpatient psychiatric hospital or facility, consistent with the requirements described in this guidance, by the effective date of section 12005 of the Cures Act, which is January 1, 2019.

CMS is available to work with states in implementing this requirement as needed, and CMS looks forward to continuing collaboration. If you have any questions, please contact Kirsten Jensen, Director of Division of Benefits and Coverage, at Kirsten.Jensen@cms.hhs.gov.